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Letter dated 11 May 1990 from the Chargé d'affaires a.i. of the Permanent Mission of Albania to the United Nations addressed to the Secretary-General

I have the honour to transmit to you excerpts from the report by Manush Myftiu, Vice-Chairman of the Council of Ministers, on behalf of the Council of Ministers, to the seventh session of the eleventh legislature of the People's Assembly (see annex).

I should be grateful if you would have the text of the present letter and its annex circulated as a document of the General Assembly, under item 103 of the preliminary list, and of the first regular session of 1990 of the Economic and Social Council, under agenda item 5.

(Signed) Genc MLLOIA
Counsellor,
Chargé d'affaires a.i.

* A/45/50.

ANNEX

Excerpts from the report by the Vice-Chairman of the Council of Ministers of Albania to the seventh session of the eleventh legislature of the People's Assembly on the improvement and democratization of penal legislation as well as on some organizational measures

Relying on its many years of experience in the struggle to protect the socialist social order and the rights and freedoms of citizens, the Council of Ministers has worked out a draft law entitled "On some changes to the penal code", which deals with the following problems:

- The establishment of rehabilitation as an institution or abolition of penal sanctions.

It is in the interest of our society that those persons who in the past have been sentenced for penal offences be re-educated and become worthy citizens. Rehabilitation corresponds to our lofty human principle that people can be corrected. After all, the penal sanction itself aims at educating the offender. This is also the aim of the educational work of society with convicts.

The practice of our country shows that the educational role of society has been very effective and most of those who have undergone punishment have been recuperated and now work and behave well in society. In this way, social rehabilitation has been translated into practice. Nevertheless, the penal code in force does not foresee the legal rehabilitation of those who have committed penal offences.

In order to combine social rehabilitation with legal rehabilitation, it is foreseen that the penal code should include rehabilitation by law and by the courts. Rehabilitation by law means avoiding punishment by the law itself, automatically, when, after undergoing punishment on parole or deprivation of freedom for up to five years, according to the respective length of the period of detention, the convict has not committed any other penal offence. Rehabilitation by the courts means avoiding punishment by trial, at the request of the State organ and mass organizations. This system is applied to persons sentenced to deprivation of freedom for more than five years, depending on the time that should have elapsed after undergoing punishment, on the condition that during this time these persons have committed no other penal offence and through their behaviour show that they abide by the rules and laws of society. The establishment of rehabilitation as an institution in the penal code, dictated by the democratic and human content of our socialist order, is an important measure to improve and further democratize our legislation, according to which the rehabilitated, either legally or de facto, will fully enjoy, just as do other citizens, the rights granted by the Constitution and laws in force.

With regard to rehabilitation, the draft law envisages also the institution of the proscription of the prosecution and the execution of sentences, that is, the

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abolition or suspension of the prosecution for a penal offence, or the execution of the sentence when the legal terms are overpassed, not only for penal offences, as is the case at present, but for criminal offences as well. With the establishment of proscription it is accepted that the person who has committed a penal offence no longer presents any threat to society and there is no need to prosecute or sentence him. This is a logical and human solution.

The proscription envisages terms from [illegible] 20 years according to the level of social threat the penal offence represents. These terms double should the author of the penal offence have attempted to avoid prosecution, but in no case should they be over 25 years. For crimes against the State, which presuppose the death penalty, there will be no proscription either of the prosecution or the execution of the sentence.

- Another aspect of the further improvement of our penal legislation is the establishment of the institution of pre-term release on parole.

Pre-term release on parole is granted when the convict is corrected and educated and this is reflected in his behaviour and work while under detention. The convict should have completed no less than half of the sentence so as to be granted pre-term release on parole.

Pre-term release on parole is envisaged by the penal code because organized educational work is done with the convicts in the detention institutions so as to make them worthy members of society again. This system creates new possibilities for the further democratization of penal policy and the implementation of the mass line, because the social organizations, along with the State organs, have the right to propose this measure in favour of the convict.

- Limitation of the number of cases to which the death penalty may apply.

At present, the penal code envisages 34 cases for application of the death penalty. As a rule, it is applied exclusively to crimes posing a major threat to society.

Although the death penalty is formally envisaged in the penal code, for many crimes it has not been applied for many years. Besides this, in 11 articles, the death penalty is envisaged for crimes committed in time of war or during a state of emergency, thus artificially extending the penal code, which is applied in normal conditions of the country's life.

Therefore, the death penalty, as an extraordinary measure, is limited to only very serious crimes, such as betrayal of the homeland and espionage, terroristic and sabotage activities, embezzlement of socialist property in special conditions, plundering of socialist and individual property, and premeditated murder. Therefore, this kind of punishment is limited to 11 cases.

Of special importance is the proposal that the death penalty should be lifted not only in the case of pregnant women, as in the past, but also for women in

general, which is another manifestation of the socialist humanism characterizing our State order.

The amendment of the provisions on crimes against the State occupies a special place in the proposed draft law. These crimes pose a serious threat to society. Here are included also the penal offences of defection and agitation and propaganda against the State. Since practice so far has proved that most of those involved in attempts at flight were immature and generally not prompted by political and counter-revolutionary motives, it has been envisaged that defection, which still remains an offence, should not be considered betrayal of the homeland, but illegal crossing of the border.

We inform the People's Assembly that the Council of Ministers has worked out a draft law that is complementary to the existing decree on passports, according to which, on request, any Albanian national will have the right to be given a passport for travel abroad.

As regards the creation of foreign or joint companies and other economic and financial institutions with foreign monopolies or States, as well as receiving credits from them, it is not indispensable that any prohibition envisaged by the penal code of the Constitution should be sanctioned in the penal code. In the future, too, we shall not accept credits or sign various economic agreements under political conditions infringing our national sovereignty. If an employee of a State organ carries out acts that run counter to the above norms, he will be responsible before the law for misuse of his position. Therefore, the abrogation of this form of betrayal from the penal code is completely justified.

Among the crimes against the State concerning which changes are proposed in the penal code is also the crime of agitation and propaganda. Today the penal code foresees the punishment of Fascist, anti-democratic, religious, warmongering and anti-socialist agitation and propaganda. The formulation of the crime of agitation and propaganda is very broad, leaving a loophole for various subjective interpretations, which in practice might bring about undesirable consequences, because even persons who are not such might be described and condemned as enemies. The Party and Government have always taken care to ensure that citizens are defended from the arbitrary interpretations and actions of any organ. Therefore, in the draft law, agitation and propaganda against the State is re-formulated and defined more clearly, considering as a crime only those acts of oral, written or other forms of agitation and propaganda aimed at overthrowing the social and State order established by the Constitution of the People's Socialist Republic of Albania, whereas Fascist and warmongering propaganda remain a crime against the State and are dealt with in a special paragraph.

With this formulation the new draft of the penal code on agitation and propaganda avoids the danger of subjectivism and interpretations that might lead to the violation of legislation and the democratic rights and liberties of citizens sanctioned by the Constitution, ensuring at the same time the defence of the State's interests.

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Narrowing the definition of agitation and propaganda against the State as mentioned above, the punishment foreseen for religious propaganda, inter alia, is lifted. This is in conformity with practice because such acts have never been penally prosecuted until now. In our country the State is separated from religion and the question of religious belief is a matter of conscience for every individual. The removal from the penal code of sanctions for religious propaganda does not mean that we are giving up atheist propaganda in our all-round educational work with the masses of the people. We are unflinchingly convinced that this contributes to the consolidation of patriotism and national consciousness and that the interest of the nation and the homeland has been and is above any religious distinctions. Our great patriots of the Albanian Renaissance, with their unique historical saying regarding the relationship between religion and the homeland, namely, that "the faith of the Albanian is love for Albania", have left us a heritage of great permanent value for the present, too. Our Party and State will also continue to follow in the future our patriotic and revolutionary traditions, so that the question of the defence of freedom, independence, sovereignty and unity of the people should always be above any religious belief.

- Internment and deportation as administrative measures have been established in our country under certain historical circumstances, and at that time they helped to safeguard and strengthen the socialist social order. Under present circumstances, however, with the general development of our social and State order, with the changes aimed at strengthening the legislation and defending the interests of citizens, it is no longer justified to maintain and apply the decree on internment and internal exile as administrative measures. Another reason for lifting this decree is that, under it, unlike the remainder of our legislation, State coercive measures are not applied against an act against the law involving individual responsibility and personal guilt. Besides, this decree runs counter to the changes introduced to our legislation, including the extension of legal defence under investigation and during court proceedings.

The invalidation of this decree will not create any legal vacuum, because now internment and internal exile are foreseen as penal sanctions imposed by the court for certain penal offences. In addition, a draft law "on preventive measures against persons posing a threat to social security", which covers a number of the measures previously included in the law on internment and internal exile as administrative measures, will be forwarded to the People's Assembly for examination and approval.

Preventive measures are adopted against persons conducting activities that, although not constituting penal offences, run counter to public morality and social ethics, against persons with a criminal predisposition to commit penal offences, who live fully or in part on unlawful profits, prostitution, corruption of children or large-scale gambling, or who refuse to be employed in socially useful work, or take part in criminal groups or association.

These measures are liable to be taken towards persons over 18 years of age.

These preventive measures will be applied only by the courts, on the basis of a regular and speedy procedure, with the accused having the services of a barrister and the right of appeal.

- The ninth and tenth plenums of the Party Central Committee also adopted decisions on the improvement of the organs of justice and the guarantee of the legal defence of the citizens.

In order to strengthen socialist legality, assistance to and control of the courts of the zones and the districts, to ensure an improvement in the quality of their juridical activity and to carry out more qualified and systematic work for the continuous improvement of legislation, a draft law for the creation of a ministry of justice has been worked out. This will enable the Council of Ministers to better follow problems of justice and a series of other problems having to do with juridical matters in our country.

The draft law on the creation of the ministry of justice has been worked out in full compliance with the content of the norms of the Constitution, sanctioning the independence of the courts in judging cases. This ministry will take care of the organization and functioning of the courts and guide and control the activity of the administration of justice, without interfering in judicial proceedings. It is envisaged that the minister of justice, for the purpose of the consolidation of socialist legality and in the interest of citizens, should have the right, for the sake of defending legality, to object to individual decisions of the courts and forums of the districts and of the zones, which is a right that does not violate the principle of the independence of the courts.

Besides the above-mentioned duties, the ministry of justice will also be responsible for the organization and functioning of lawyers', executors' and notary offices, as well as the preparation of draft codes, draft laws and so on related to the organization and activity of the courts, offering at the same time its opinion on all the drafts of legal acts prepared by the ministries and other central institutions before they are submitted to the Council of Ministers for examination.

It will also be part of the mandate of the ministry of justice to co-ordinate the work for the training of lawyers of various bodies, to co-ordinate activities aimed at publicizing laws, running criminal and legal medicine services, and so on.

Up to now, according to the provisions in force, the protection of the legal interests of citizens, the State and social organizations is ensured by the legal aid offices, which have also ensured, in cases envisaged by the law, the defence of the defendant in court, but the re-establishment of advocacy is an important measure, which broadens the defence of citizens' rights and contributes to the strengthening of legality. Advocacy will not only render legal assistance to citizens, State organs and social organizations for the defence of their legitimate interests in court while under investigation and arbitration, but will also exert an influence in the application of justice. The measures envisaged in the draft law will contribute to the fuller and more effective implementation of article 102 of the Constitution, according to which the defendant enjoys the right to have a

lawyer, because citizens will now be guaranteed qualified assistance in both civil and penal cases, whenever they demand it. Moreover, this assistance assumes a more complete character, being extended for the first time to investigation, which marks a new phase in the democratization of the penal process in our country.

Besides the defence of the legitimate rights and interests of the defendant and of the parties to the investigative and legal process, lawyers will also ensure all kinds of legal assistance, such as the formulation of indictments, requests for penal prosecution claims against administrative organs and so on.

In carrying out these tasks it is envisaged that the legal profession should be organized in special orders as voluntary associations. The aim is to create suitable conditions for lawyers to fulfil their tasks properly, ensuring independence and objectivity in their activity.

- As regards simplifying the organs of justice, it is envisaged that the courts of villages, cities and city districts, which have until now examined penal offences and passed sentence on them, being thus of an official character, should be abrogated from the judicial system.

Their abrogation is also justified by the fact that judgement by these courts of penal, civil and administrative cases has been of little effect. According to the draft law, they are converted into organs of a social or unofficial character - social courts that will operate at the people's councils and will be elected by public ballot by the people every three years. They will be composed of social activists who enjoy authority and the confidence of the people. These social courts will co-operate closely with the social organizations and exercise a powerful influence on the strengthening of the unity of our people, solving through conciliation conflicts arising from complaints such as insults, beatings, and so on, without enforcing penal sanctions. As far as administrative violations are concerned, it is envisaged that they should be dealt with by special organs (the police, the inspectorate, etc.).

The amendments, envisaged in the draft laws on the creation of the ministry of justice, advocacy and social courts call for corresponding amendments and completions to the codes of penal and civil procedure, which are also forwarded to the Assembly for approval.